

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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JUL 10 1998

In the Matter of )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

McLEODUSA TELECOMMUNICATIONS )  
SERVICES, INC. )

CC Dkt. 98-94

Petition for Preemption on Nebraska )  
Public Service Commission Decision )  
Permitting the Withdrawal of Centrex )  
Plus Service by U S West )  
Communications, Inc. )

**COMMENTS OF THE ASSOCIATION FOR  
LOCAL TELECOMMUNICATIONS SERVICES  
IN SUPPORT OF THE PETITION**

The Association for Local Telecommunications Services ("ALTS") pursuant to Public Notice DA 98-1099 (June 10, 1998), hereby files its comments in support of the petition filed by McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") asking the Commission to preempt the Nebraska Public Service Commission's approval of U S WEST's withdrawal of Centrex service.

As is amply demonstrated in the petition, U S WEST's withdrawal of the Centrex service was prompted by its desire to prevent competitors from reselling the service in violation of Section 251(c)(4). And, as has been amply demonstrated by the pleading, its actions have been successful in preventing at least one company from providing service in the manner which it desired in violation of Section 253(a). Thus, the Commission should preempt the Nebraska PSC decision allowing U S WEST to take such

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action.

**I. U S WEST'S ACTION VIOLATES SECTION 251(C) (4)'S  
REQUIREMENT THAT AN ILEC OFFER FOR RESALE,  
AT WHOLESALE RATES ANY TELECOMMUNICATIONS SERVICE  
THAT THE CARRIER PROVIDES AT RETAIL.**

In 1996 U S WEST sought permission from the Nebraska PSC to withdraw Centrex service from the Nebraska market. However, existing retail customers would be "grandfathered" in, and service to those customers could continue until mid-2005. Thus, the service would be available to existing customers for almost nine years after the service had been discontinued to new customers. The net effect of this extremely long grandfathering is that the service effectively has been withdrawn only from new customers.

Putting aside whether a short grandfathering violates the statutory requirement to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail, certainly an effective prohibition for nine years violates Section 251(c) (4). And the fact that all new customers are prohibited from obtaining service is simply irrelevant to whether U S WEST's actions violate the Section 251 prohibition. The fact remains that in Nebraska a retail service is being provided and carriers effectively are prohibited from obtaining that service at wholesale prices and reselling it.<sup>1</sup>

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<sup>1</sup> It is evident from the record that one of the primary reasons that U S WEST sought to "withdraw" the service was to prevent Centrex resale.

**II. THE EFFECT OF THE CENTREX "WITHDRAWAL" IS TO PROHIBIT THE ABILITY OF McLeodUSA AND ANY OTHER CARRIER TO PROVIDE SERVICE IN THE MANNER WHICH THEY SEEK TO PROVIDE SERVICE, AND MUST BE PREEMPTED UNDER SECTION 253(A).**

The effective prohibition of resale of Centrex service results in a prohibition of telecommunications service by certain carriers in violation of Section 253(a). The proof is in the pudding. McLeodUSA has stated that resale of Centrex service is its "primary platform for delivering local exchange service" and is currently doing just that in the states where U S WEST was prohibited from withdrawing Centrex service. Yet McLeodUSA has not provided service in Nebraska.

While it is clear that there may be other ways for McLeodUSA to provide service in Nebraska than through resale of Centrex Service, that is not determinative of whether the prohibition of entering the market through Centrex resale violates Section 253(a). The Commission has clearly held that Section 253(a) is violated whenever a carrier is prevented from providing service in the manner in which it seeks to provide the service. See Texas Preemption Order, 12 FCC Rcd 3460 (1997). Thus, a restriction that prevents a carrier from providing service by the means, or over the facilities, or via a particular entrance strategy that it desires (particularly a strategy, like resale, that is specifically contemplated by the Act) must be preempted.

The Commission has often stated that it is disappointed in

the pace at which competition has come to rural markets. One of the best ways that the Commission can jump start such competition is to preempt the Nebraska PSC decision and pave the way for McLeodUSA and others to begin the provision of competitive services in Nebraska.

#### CONCLUSION

For the foregoing reasons the Commission should expeditiously preempt the Nebraska PSC order allowing U S WEST to effectively prevent the provision of resold Centrex service in Nebraska as violative of section 253(a) of the Telecommunications Act of 1996.

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July 10, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 1998, copies of the foregoing Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.

  
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